

1 Nancee S. Schwartz  
2 Attorney at Law  
3 California State Bar No. 107567  
4 105 West F Street, Ste. 208  
5 San Diego, CA 92101  
6 Office: (619)232-5044  
7 Naneesschwartz@gmail.com

8 Attorney for Defendant  
9 Angel Dominguez-Ramirez

10 **UNITED STATES DISTRICT COURT**  
11 **SOUTHERN DISTRICT OF CALIFORNIA**  
12 **(HON. WILLIAM Q. HAYES)**

13 UNITED STATES OF AMERICA, )

14 Plaintiff, )

15 v. )

16 ANGEL DOMINGUEZ-RAMIREZ, )

17 Defendant. )

CASE NO. 16-CR-1996-WQH

NOTICE OF MOTION  
AND MOTION TO COMPEL  
DISCOVERY, TO PRESERVE  
EVIDENCE AND TO FILE  
FURTHER MOTIONS

DATE: 5 May 2019  
TIME: 2:00 p.m.

18 TO: ROBERT BREWER, JR., UNITED STATES ATTORNEY AND TO JOSHUA  
19 JONES AND KYLE MARTIN , ASSISTANT UNITED STATES ATTORNEYS:  
20 PLEASE TAKE NOTICE that on 5 May 2019 at 2:00 p.m., or as soon thereafter  
21 as counsel may be heard, the defendant, Angel Dominguez-Ramirez, will present the  
22 below-listed motions in the above-entitled case.

23 I.  
STATEMENT OF THE CASE

24 Defendant Angel Dominguez-Ramirez is charged by Indictment with  
25 International Conspiracy to Distribute Controlled Substances, Conspiracy to  
26 Distribute Controlled Substances and Conspiracy to Launder Monetary

1 Instruments.

2 II.  
3 SUMMARY OF FACTS

4 On or about 3 November 2016, Angel Dominguez-Ramirez was arrested in  
5 Mexico. He was extradited to the United States on 10 April 2019 and remains in  
6 custody in San Diego pursuant to a stipulated Order of Detention entered 11 April  
7 2019.

8 III.  
9 MOTION TO COMPEL DISCOVERY

10 The government must disclose the information requested in this motion for  
11 discovery under the obligations of Federal Rule of Criminal Procedure 16 and  
12 *Brady v. Maryland*, 373 U.S. 83 , 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963).  
13 Moreover, a defendant's entitlement to due process of law, guaranteed by the Fifth  
14 Amendment to the United States Constitution, as well as his Sixth Amendment  
15 right to effective assistance counsel, impose additional requirements on the Court  
16 and prosecution to ensure the production of fair discovery.

17 All of the requests are for items within the possession, custody, or control of  
18 either state or the federal government. This, of course, includes attorneys for the  
19 government, agents of the Federal Bureau of Investigation, the U.S. Customs, the  
20 Immigration and Naturalization Service and in this case, other government agents,  
21 officials, employees, or informants participating in the investigation or prosecution  
22 of the matters involved in this case whether under state or federal authority. It has  
23 been held repeatedly that the government's discovery obligations extend to  
24 materials in the possession, custody or control of all its agencies and agents. *See*,  
25 *e.g. United States v. Beasley*, 576 F.2d 625, 632 (5th Cir. 1978); *United States v.*  
26 *Bryant*, 439 F.2d 642, 650 (D.C. Cir. 1971); *United States v. James*, 495 F.2d 434,  
27 436 (5th Cir. 1974); *United States v. Deutsch*, 475 F.2d 55, 57 (5th Cir. 1973).

1 This request is not limited to those items that the prosecutor knows of, but rather  
 2 includes all discovery listed below that is in the custody, control, care, or  
 3 knowledge of any "closely related investigative [or other] agencies" under *United*  
 4 *States v. Bryan*, 868 F.2d 1032 (9th Cir.), *cert. denied*, 493 U.S. 858 (1989):

5 This proposition was further reiterated in the United States Supreme Court  
 6 case of *Kyles v. Whitley*, 514 U.S. 419, 115 S.Ct. 1555, 131 L. Ed. 2d 490 (1995)  
 7 in which the court stated:

8 [T]he prosecution, which alone can know what is  
 9 undisclosed, must be assigned the consequent  
 10 responsibility to gauge the likely net effect of all  
 11 such evidence and make disclosure when the point  
 12 of "reasonable probability" is reached. This in turn  
 13 means that the individual prosecutor has a duty to  
 14 learn of any favorable evidence known to the others  
 15 acting on the government's behalf in the case,  
 including the police. But whether the prosecutor  
 succeeds or fails in meeting this obligation  
 (whether, that is, a failure to disclose is in good  
 faith or bad faith, see *Brady*, 373 U.S. at 87), the  
 prosecution's responsibility for failing to disclose  
 known, favorable evidence rising to a material level  
 of importance is inescapable."

16 *Id.* 115 S.Ct. at 1567.

17 (1) The Defendant's Statements Under Fed. R. Crim. P. 16 (a)(1)(A) the  
 18 defendant is entitled to disclosure of all copies of any written or recorded  
 19 statements made by the defendant; the substance of any statements made by the  
 20 defendant which the government intends to offer in evidence at trial; any recorded  
 21 testimony of the defendant before the grand jury; any response by the defendant to  
 22 interrogation; the substance of any oral statements which the government intends  
 23 to introduce at trial, and any written summaries of the defendant's oral statements  
 24 contained in the handwritten notes of the government agent; any response to any  
 25 *Miranda* warnings which may have been given to the defendant (*see United States*  
 26 *v. McElroy*, 697 F.2d 459 (2d Cir. 1982)); and any other statements by the  
 27 defendant that are discoverable under Fed. R. Crim. P. 16(a)(1)(A). The Advisory

1 Committee Notes as well as the 1991 amendments to Rule 16 make it clear that the  
2 Government must reveal all the defendant's statements, whether oral or written  
3 regardless of whether the Government intends to introduce those statements;

4 (2) Arrest Reports, Notes and Dispatch Tapes The defendant also  
5 specifically requests that all arrest reports, notes and dispatch or any other tapes  
6 that relate to the circumstances surrounding his arrest or any questioning, if such  
7 reports have not already been produced in their entirety, be turned over to him.  
8 This request includes, but is not limited to, any rough notes, records, reports,  
9 transcripts or other documents in which statements of the defendant or any other  
10 discoverable material is contained. This is all discoverable under Fed. R. Crim. P.  
11 16(a)(1)(A) and *Brady v. Maryland*, 373 U.S. 83 (1963). *See also United States v.*  
12 *Johnson*, 525 F.2d 999 (2d Cir. 1975), *cert. denied*, 424 U.S. 920 (1976); *United*  
13 *States v. Lewis*, 511 F.2d 798 (D.C. Cir. 1975); *United States v. Pilnick*, 267 F.  
14 *Supp.* 791 (S.D.N.Y. 1967); *Loux v. United States*, 389 F.2d 911 (9th Cir.), *cert.*  
15 *denied*, 393 U.S. 867 (1968). Arrest reports, investigator's notes, memos from  
16 arresting officers, dispatch tapes, sworn statements, and prosecution reports  
17 pertaining to the defendant are available under Fed. R. Crim. P. 16(a)(1)(B) and ©,  
18 Fed. R. Crim. P. 26.2 and 12(I);

19 (3) Reports of Scientific Tests or Examinations Pursuant to Fed. R. Crim. P.  
20 16(D), Mr. Dominguez-Ramirez requests the reports of all tests and examinations  
21 conducted upon any evidence in this case; this request includes the raw image file  
22 from any seized phone (full forensic file with extraction and image file) and all  
23 cell phone records;

24 (4) Brady Material The defendant requests all documents, statements,  
25 agents' reports, and tangible evidence favorable to the defendant on the issue of  
26 guilt and/or which affects the credibility of the government's case. Impeachment  
27  
28

as well as exculpatory evidence falls within *Brady's* definition of evidence favorable to the accused. *United States v. Bagley*, 473 U.S. 667 (1985); *United States v. Agurs*, 427 U.S. 97 (1976);

(5) Any Information that May Result in a Lower Sentence under the United States Sentencing Guidelines (U.S.S.G.) As discussed above, this information is discoverable under *Brady v. Maryland*, 373 U.S. 83 (1963). This request includes any cooperation or attempted cooperation by the defendant, as well as any information that could affect any base offense level or specific offense characteristic under Chapter Two of the U.S.S.G. Also included in this request is any information relevant to a Chapter Three adjustment, a determination of the defendant's criminal history, or any other application of the U.S.S.G.;

(6) The Defendant's Prior Record Evidence of prior record is available under Fed. R. Crim. P. 16(a)(1)(B); This information is specifically requested, as is a complete "rap sheet" or criminal history summary.

(7) Any Proposed 404(b) Evidence. Evidence of prior similar acts is discoverable under Fed. R. Crim. P. 16(a)(1)© and Fed. R. Evid. 404(b) and 609. In addition, under Fed. R. Evid. 404(b), "upon request of the accused, the prosecution . . . shall provide reasonable notice in advance of trial . . . of the general nature . . ." of any evidence the government proposes to introduce under Fed. R. Evid. 404(b) at trial. The defendant requests that such notice be given three weeks before trial in order to give the defense time to adequately investigate and prepare for trial;

(8) Evidence Seized Evidence seized as a result of any search, either warrantless or with a warrant, is discoverable under Fed. R. Crim. P. 16(a)(1)©;

(9) Request for Preservation of Evidence The defendant specifically requests that all dispatch tapes or any other physical evidence that may be

1 destroyed, lost, or otherwise put out of the possession, custody, or care of the  
 2 government and which relate to the arrest or the events leading to the arrest in this  
 3 case be preserved;

4 (10) Tangible Objects The defendant requests, under Fed. R. Crim. P.  
 5 16(a)(2)©, the opportunity to inspect and copy as well as test, if necessary, all  
 6 other documents and tangible objects, including photographs, books, papers,  
 7 documents, photographs of building or places, or copies of portions thereof which  
 8 are material to the defense or intended for use in the government's case-in-chief, or  
 9 were obtained from or belong to the defendant.

10 (11) Evidence of Bias or Motive to Lie The defendant requests any evidence  
 11 that any prospective government witness, including Confidential Informants, is  
 12 biased or prejudiced against the defendant, or has a motive to falsify or distort his  
 13 or her testimony. *Pennsylvania v. Ritchie*, 480 U.S. 39 (1987); *United States v.*  
 14 *Strifler*, 851 F.2d 1197 (9th Cir. 1988), *cert. denied*, 489 U.S. 1032 (1989);

15 (12) Impeachment Evidence The defendant requests any evidence that any  
 16 prospective government witness has engaged in any criminal act, whether or not  
 17 resulting in a conviction, and whether any witness has made a statement favorable  
 18 to the defendant. *See Fed. Brady v. Maryland* R. Evid. 608, 609 and 613. Such  
 19 evidence is discoverable under, 373 U.S. 83 (1963). *See United States v. Strifler*,  
 20 851 F.2d 1197 (9th Cir. 1988) (witness' prior record); *Thomas v. United States*,  
 21 343 F.2d 49 (9th Cir. 1965) (evidence that detracts from a witness' credibility);

22 (13) Evidence of Criminal Investigation of Any Government Witness The  
 23 defendant requests any evidence that any prospective witness is under  
 24 investigation by federal, state or local authorities for any criminal conduct. *United*  
 25 *States v. Chitty*, 760 F.2d 425 (2d Cir.), *cert. denied*, 474 U.S. 945 (1985);

26 (14) Evidence Affecting Perception, Recollection, Ability to Communicate,  
 27  
 28

1 or Truth Telling The defense requests any evidence, including any medical or  
 2 psychiatric report or evaluation, tending to show that any prospective witness'  
 3 ability to perceive, remember, communicate, or tell the truth is impaired; and any  
 4 evidence that a witness has ever used narcotics or other controlled substance, or  
 5 has ever been an alcoholic. *United States v. Strifler*, 851 F.2d 1197 (9th Cir.  
 6 1988); *Chavis v. North Carolina*, 637 F.2d 213, 224 (4th Cir. 1980);

7 (15) Witness Addresses The defendant requests the name and last known  
 8 address of each prospective government witness. *See United States v. Napue*, 834  
 9 F.2d 1311 (7th Cir. 1987); *United States v. Tucker*, 716 F.2d 576 (9th Cir. 1983)  
 10 (failure to interview government witnesses by counsel is ineffective); *United*  
 11 *States v. Cook*, 608 F.2d 1175, 1181 (9th Cir. 1979) (defense has equal right to  
 12 talk to witnesses), *cert. denied*, 444 U.S. 1034 (1980). The defendant also  
 13 requests the name and last known address of every witness to the crime or crimes  
 14 charged (or any of the overt acts committed in furtherance thereof) who will not be  
 15 called as a government witness. *United States v. Cadet*, 727 F.2d 1453 (9th Cir.  
 16 1984);

17 (16) Name of Witnesses Favorable to the Defendant The defendant requests  
 18 the name of any witness who made an arguably favorable statement concerning the  
 19 defendant or who could not identify him or who was unsure of his identity, or  
 20 participation in the crime charged. *Jackson v. Wainwright*, 390 F.2d 288 (5th Cir.  
 21 1968); *Chavis v. North Carolina*, 637 F.2d 213, 223 (4th Cir. 1980); *Jones v.*  
 22 *Jago*, 575 F.2d 1164, 1168 (6th Cir.), *cert. denied*, 439 U.S. 883 (1978); *Hudson*  
 23 *v. Blackburn*, 601 F.2d 785 (5th Cir. 1979), *cert. denied*, 444 U.S. 1086 (1980);

24 (17) Statements Relevant to the Defense The defendant requests disclosure  
 25 of any statement that may be "relevant to any possible defense or contention" that  
 26 he might assert. *United States v. Bailleaux*, 685 F.2d 1105 (9th Cir. 1982);



1           (18) Jencks Act Material The defense requests all material to which  
 2 defendant is entitled pursuant to the Jencks Act, 18 U.S.C. § 3500, reasonably in  
 3 advance of trial, including dispatch tapes. A verbal acknowledgment that "rough"  
 4 notes constitute an accurate account of the witness' interview is sufficient for the  
 5 report or notes to qualify as a statement under §3500(e)(1). *Campbell v. United*  
 6 *States*, 373 U.S. 487, 490-92 (1963). In *United States v. Boshell*, 952 F.2d 1101  
 7 (9th Cir. 1991), the Ninth Circuit held that when an agent goes over interview  
 8 notes with the subject of the interview the notes are then subject to the Jencks Act.  
 9 The defense requests pre-trial production of Jencks material to expedite cross-  
 10 examination and to avoid lengthy recesses during trial;

11           (19) Giglio Information Pursuant to *Giglio v. United States*, 405 U.S. 150  
 12 (1972), the defendant requests all statements and/or promises, express or implied,  
 13 made to any government witnesses, in exchange for their testimony in this case,  
 14 and all other information which could arguably be used for the impeachment of  
 15 any government witnesses;

16           (20) Personnel Records of Government Officers Involved in the Arrest The  
 17 defendant requests all citizen complaints and other related internal affairs  
 18 documents involving any of the Federal Bureau of Investigation officers, or other  
 19 law enforcement officers who were involved in the investigation, arrest and  
 20 interrogation of him, pursuant to *Pitchess v. Superior Court*, 11 Cal. 3d 531, 539  
 21 (1974). Because of the sensitive nature of these documents, defense counsel will  
 22 not be able to procure them from any other source;

23           (21) Government Examination of Law Enforcement Personnel Files Mr.  
 24 Dominguez-Ramirez requests that the government examine the personnel files and  
 25 any other files within its custody, care or control, or which could be obtained by the  
 26 government, for all testifying witnesses, including testifying officers. Mr.



1 Dominguez-Ramirez requests that these files be reviewed by the government  
 2 attorney for evidence of perjurious conduct or other like dishonesty, or any other  
 3 material relevant to impeachment, or any information that is exculpatory, pursuant  
 4 to its duty under *United States v. Henthorn*, 931 F.2d 29 (9th Cir. 1991). The  
 5 obligation to examine files arises by virtue of the defense making a demand for  
 6 their review: the Ninth Circuit in *Henthorn* remanded for in camera review of the  
 7 agents' files because the government failed to examine the files of agents who  
 8 testified at trial. This Court should therefore order the government to review all  
 9 such files for all testifying witnesses and turn over any material relevant to  
 10 impeachment or that is exculpatory prior to trial. Mr. Dominguez-Ramirez  
 11 specifically requests that the prosecutor, not the law enforcement officers, review  
 12 the files in this case. The duty to review the files, under *Henthorn*, should be the  
 13 prosecutor's and not the officers'. Only the prosecutor has the legal knowledge and  
 14 ethical obligations to fully comply with this request.

15 (22) Any and All Photographs Shown to Any Witness

16 (23) Residual Request. Mr. Dominguez Ramirez intends by this discovery  
 17 motion to invoke his rights to discovery to the fullest extent possible under the  
 18 Federal Rules of Criminal Procedure and the Constitution and laws of the United  
 19 States. He requests that the government provide him and his attorney with the  
 20 above material sufficiently in advance of trial.

#### 21 IV.

#### 22 PRESERVE EVIDENCE

23 Consistent with Federal Rule of Criminal Procedure 16, and the case law  
 24 cited above in support of defendant's motion for discovery, Mr. Dominguez-  
 25 Ramirez requests that the Court issue an order preserving the evidence in this case.

#### 26 V.

#### 27 THE COURT SHOULD GRANT LEAVE TO FILE FURTHER MOTIONS.

1 Mr. Dominguez-Ramirez asks leave to file further motions in the event that  
2 discovery received or reviewed gives rise to the need for further motions and  
3 proceedings.

4 VI.  
5 CONCLUSION

6 For the foregoing reasons, defendant request that this motion for discovery,  
7 preservation of evidence and motion for leave for further filings be granted.

8 DATED: 2 May 2019

s/s Nancee s. Schwartz  
Attorney for Angel Dominguez-Ramirez  
Nanceesschwartz@gmail.com